IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

WEDNESDAY, THE 21ST MARCH 2007 / 30TH PHALGUNA 1928

WP(C).No. 9626 of 2007(U)

PETITIONER:

K.M.SAINABA, M/S.VUS, TIMBERS,
PUTHUPADY P.O., MOOVATTUPUZHA.

BY ADV. SRI.C.V.MANUVILSAN
SRI.G.SUDHEER (THURAVOOR)

RESPONDENTS:
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1. **DEPUTY COMMISSIONER,**
   COMMERCIAL TAXES, KOLLAM.

2. **INTELLIGENCE OFFICER, KOLLAM.**

3. **INSPECTING ASST.COMMISSIONER,**
   DEPARTMENT OF COMMERCIAL TAXES,
   MOOVATTUPUZHA.

BY SR.GOVT.PLEADER SRI. MOHAMMED RAFIQ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.9626/2007 U

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE ORDER NO.IBK/C187/05-06/03-04/CR69/06-07 DTD. 10/11/2006.**

EXT.P2: **COPY OF THE APPEAL AGAINST THE ORDER NO.IBK/C187/ 05-06/03-04/CR69/06-07 DTD. 10/11/2006.**

EXT.P3: **COPY OF THE STAY PETITION FOR 2003-04.**

EXT.P4: **COPY OF THE RR NOTICE UNDER SECTION 7 OF THE RR ACT VIDE RR NO.49/06-07.**

EXT.P5: **COPY OF THE INTERIM ORDER IN WP(C) NO.5129/2007.**

EXT.P6: **COPY OF THE ORDER NO.STA (R)1177/2007 DTD. 01/03/2007.**

/TRUE COPY/

KSS

K.BALAKRISHNAN NAIR, J.

W.P.(C).No.9626 of 2007-U

Dated this the 21st day of March, 2007

JUDGMENT

The petitioner feeling aggrieved by Ext.P1 order of penalty filed Ext.P2 revision. She also moved Ext.P3 stay application along with the revision. Pursuant to the direction of this Court, the stay application was considered by the first respondent and Ext.P6 order has been passed. A reading of Ext.P6 would show that the revisional authority proceeded on the footing that what is under challenge is an assessment order and direction was issued to pay 50% of the balance tax. This order is challenged on various grounds by the petitioner.

2. I heard the learned Government Pleader for the respondents.

3. Ext.P6 reveals total non-application of mind. While passing the interim orders in revision against penalty orders, different considerations arise. In this case the revisional authority as stated earlier proceeded on the footing that what is under challenge is an assessment order. So, the order is vitiated for non-application of mind and also for omission to taken into account the relevant factor. Accordingly, Ext.P6 is quashed. The stay application is remitted for fresh determination of the first respondent, in accordance with law. He shall pass fresh orders on it, within two weeks from the date of production of a copy of this judgment. Recovery of the penalty amount of Rs. 19,21,614/- demanded under Ext.p4 will be kept in abeyance

for one month from today.

The Writ Petition is disposed of above.

K.BALAKRISHNAN NAIR, JUDGE.

MS